

HB2713



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

HB2713

by Rep. Dan Brady

SYNOPSIS AS INTRODUCED:

740 ILCS 180/2

from Ch. 70, par. 2

Amends the Wrongful Death Act. Provides that in an action where it has been proven by a preponderance of the evidence that the defendant's intoxication contributed to, or proximately caused, the death of the deceased person, the jury may award punitive damages to the surviving spouse and next of kin of the deceased person.

LRB099 07467 HEP 27589 b

A BILL FOR

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Wrongful Death Act is amended by changing
5 Section 2 as follows:

6 (740 ILCS 180/2) (from Ch. 70, par. 2)

7 Sec. 2. Every such action shall be brought by and in the
8 names of the personal representatives of such deceased person,
9 and, except as otherwise hereinafter provided, the amount
10 recovered in every such action shall be for the exclusive
11 benefit of the surviving spouse and next of kin of such
12 deceased person. In every such action the jury may give such
13 damages as they shall deem a fair and just compensation with
14 reference to the pecuniary injuries resulting from such death,
15 including damages for grief, sorrow, and mental suffering, to
16 the surviving spouse and next of kin of such deceased person.
17 In an action where it has been proven by a preponderance of the
18 evidence that the defendant's intoxication contributed to, or
19 proximately caused, the death of the deceased person, the jury
20 may award punitive damages to the surviving spouse and next of
21 kin of the deceased person.

22 The amount recovered in any such action shall be
23 distributed by the court in which the cause is heard or, in the

1 case of an agreed settlement, by the circuit court, to each of
2 the surviving spouse and next of kin of such deceased person in
3 the proportion, as determined by the court, that the percentage
4 of dependency of each such person upon the deceased person
5 bears to the sum of the percentages of dependency of all such
6 persons upon the deceased person.

7 Where the deceased person left no surviving spouse or next
8 of kin entitled to recovery, the damages shall, subject to the
9 following limitations inure, to the exclusive benefit of the
10 following persons, or any one or more of them:

11 (a) to the person or persons furnishing hospitalization or
12 hospital services in connection with the last illness or injury
13 of the deceased person, not exceeding \$450;

14 (b) to the person or persons furnishing medical or surgical
15 services in connection with such last illness or injury, not
16 exceeding \$450;

17 (c) to the personal representatives, as such, for the costs
18 and expenses of administering the estate and prosecuting or
19 compromising the action, including a reasonable attorney's
20 fee. In any such case the measure of damages to be recovered
21 shall be the total of the reasonable value of such
22 hospitalization or hospital service, medical and surgical
23 services, funeral expenses, and such costs and expenses of
24 administration, including attorney fees, not exceeding the
25 foregoing limitations for each class of such expenses and not
26 exceeding \$900 plus a reasonable attorney's fee.

1 Every such action shall be commenced within 2 years after
2 the death of such person but an action against a defendant
3 arising from a crime committed by the defendant in whose name
4 an escrow account was established under the "Criminal Victims'
5 Escrow Account Act" shall be commenced within 2 years after the
6 establishment of such account. For the purposes of this Section
7 2, next of kin includes an adopting parent and an adopted
8 child, and they shall be treated as a natural parent and a
9 natural child, respectively. However, if a person entitled to
10 recover benefits under this Act, is, at the time the cause of
11 action accrued, within the age of 18 years, he or she may cause
12 such action to be brought within 2 years after attainment of
13 the age of 18.

14 In any such action to recover damages, it shall not be a
15 defense that the death was caused in whole or in part by the
16 contributory negligence of one or more of the beneficiaries on
17 behalf of whom the action is brought, but the amount of damages
18 given shall be reduced in the following manner.

19 The trier of fact shall first determine the decedent's
20 contributory fault in accordance with Sections 2-1116 and
21 2-1107.1 of the Code of Civil Procedure. Recovery of damages
22 shall be barred or diminished accordingly. The trier of fact
23 shall then determine the contributory fault, if any, of each
24 beneficiary on behalf of whom the action was brought:

- 25 (1) Where the trier of fact finds that the contributory
26 fault of a beneficiary on whose behalf the action is

1 brought is not more than 50% of the proximate cause of the
2 wrongful death of the decedent, then the damages allowed to
3 that beneficiary shall be diminished in proportion to the
4 contributory fault attributed to that beneficiary. The
5 amount of the reduction shall not be payable by any
6 defendant.

7 (2) Where the trier of fact finds that the contributory
8 fault of a beneficiary on whose behalf the action is
9 brought is more than 50% of the proximate cause of the
10 wrongful death of the decedent, then the beneficiary shall
11 be barred from recovering damages and the amount of damages
12 which would have been payable to that beneficiary, but for
13 the beneficiary's contributory fault, shall not inure to
14 the benefit of the remaining beneficiaries and shall not be
15 payable by any defendant.

16 The trial judge shall conduct a hearing to determine the
17 degree of dependency of each beneficiary upon the decedent. The
18 trial judge shall calculate the amount of damages to be awarded
19 each beneficiary, taking into account any reduction arising
20 from either the decedent's or the beneficiary's contributory
21 fault.

22 This amendatory Act of the 91st General Assembly applies to
23 all actions pending on or filed after the effective date of
24 this amendatory Act.

25 This amendatory Act of the 95th General Assembly applies to
26 causes of actions accruing on or after its effective date.

1 (Source: P.A. 95-3, eff. 5-31-07.)